

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION

EDDIE PRINCE ROBINSON, III

Plaintiff,

vs.

JOHN WILCHER, CHATHAM COUNTY
SHERIFF IN HIS OFFICIAL CAPACITY,
CORIZON HEALTH, INC., JOSEPH
MOYSE, M.D., CARL FAULKS, M.D., AND
JOHN DOES 1-99

Defendant.

CV 416 - 179

Civil Action

NOTICE OF REMOVAL

COME NOW Defendants John Wilcher, in his Official Capacity as Chatham County Sheriff, Corizon Health, Inc., and Carl Faulks, M.D. ("Defendants"), by and through undersigned counsel of record, within the time prescribed by law, file this Notice of Removal pursuant to 28 U.S.C. §§ 1441 and 1446, and respectfully show to the Court the following:

1.

The case of Robinson v. Wilcher et al., was filed and is presently pending in the Superior Court of Chatham County, and is known as Civil Action No. CV16-0502-KA in that Court.

2.

Plaintiff in said action asserts causes of action against Defendants based upon Federal law, including claims for damages under 42 U.S.C. § 1983. Specifically, Plaintiff alleges Defendants violated his right to be free from unnecessary pain and suffering and to be provided with constitutionally adequate medical care while he was incarcerated at the Chatham County Detention Center in 2014.

3.

This Court has jurisdiction in this matter on the basis of federal question jurisdiction, pursuant to 28 U.S.C. §§1331 and 1441.

4.

Additionally, there is supplemental jurisdiction regarding any state law claims in this action pursuant to 28 U.S.C. § 1367.

5.

As required by 28 U.S.C. § 1446(a), the Defendants attach to this Notice of Removal a true and correct copy of all process, pleadings and orders as received by the Defendants is attached hereto as Exhibit "1" and incorporated herein by reference. The undersigned counsel for Defendants verify that Exhibit "1" is a true and complete copy of all pleadings and other documents filed in the Superior Court proceeding.

6.

No further proceedings have occurred in the subject action.

7.

There are no motions pending in the Superior Court action at the time of removal to this Court.

8.

On June 2, 2016, Defendants Corizon Health, Inc. and Dr. Carl Faulks executed an acknowledgement of service of the Complaint. That pleading was filed with the Superior Court on June 9, 2016. Due to a clerical error, a separate but identical acknowledgement of service was filed with the Court on June 15, 2016. In any event, this Notice of Removal has been timely filed pursuant to 28 U.S.C. § 1446(b) within thirty days of acknowledgement of the Plaintiff's Complaint by these Defendants.

9.

On June 28, 2016, Defendant John Wilcher executed an acknowledgement of service of the Complaint. That pleading was filed with the Superior Court on June 28, 2016. This Notice of Removal has been timely filed pursuant to 28 U.S.C. § 1446(b) within thirty days of acknowledgement of the Plaintiff's Complaint by Defendant Wilcher.

10.

Upon information and belief, Defendant Dr. Joseph Moyse has not been served and has not acknowledged service of the Complaint.

11.

John Wilcher, in his Official Capacity as Chatham County Sheriff, Corizon Health, Inc., Carl Faulks, M.D., Joseph Moyse, M.D., and John Does 1-99 are the only named defendants in this case.

12.

All properly served Defendants, including John Wilcher, Chatham County Sheriff in his Official Capacity, Corizon Health, Inc., and Carl Faulks, M.D., consent to removal to the Savannah Division of the United States District Court for the Southern District of Georgia. This Notice of Removal has been timely filed pursuant to 28 U.S.C. § 1446(b) within thirty days of initial receipt of the Plaintiff's Complaint by all properly served Defendants.

13.

Defendant Joseph Moyse, M.D. having not yet been served or acknowledged service of Plaintiff's Complaint, is not required to consent to removal at this time as only Defendants who have been served must consent to removal. Thus, pursuant to 28 U.S.C. §§ 1441 and 1446, Defendant Moyse need not join in or consent to the removal of the action.

14.

John Does 1-99 are not required to consent as only Defendants who have been served must consent to removal. John Does 1-99 are fictitious names and these individuals have not been properly served a copy of the initial pleading. Thus, pursuant

to 28 U.S.C. §§ 1441 and 1446, John Does 1-99 need not join in or consent to the removal of the action.

15.

Venue properly rests in the Savannah Division of the United States District Court for the Southern District of Georgia, as this case is being removed from the Superior Court of Chatham County, Georgia, which sits and is located in the Savannah Division of the United States District Court for the Southern District of Georgia.

16.

Concurrently with this Notice, Defendants will file a true and correct copy of this Notice with the Superior Court of Chatham County, Georgia, as provided by law, and written notice is being sent to Plaintiff's counsel.

17.

The allegations of this Notice are true and correct and this case is removable to this Court.

18.

If any question arises as to the propriety of the removal of this action, Defendants respectfully request the opportunity to present a brief and oral argument in support of their position that this cause is removable.

WHEREFORE Defendants pray that the case be removed to the United States District Court for the Southern District of Georgia, Savannah Division.

Respectfully submitted this 30th day of June 2016.

CARLOCK, COPELAND & STAIR, L.L.P.

By: /s/ Thomas S. Carlock _____
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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the within and foregoing pleading upon all parties to this matter by the CM/ECF system:

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This 30th day of June, 2016.

By: /s/ Thomas S. Carlock
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